

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**ANDREW B. SIMPKINS v. STATE OF TENNESSEE**

**Direct Appeal from the Circuit Court for Wayne County  
No. 14304     Jim Hamilton, Judge**

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**No. M2008-00195-CCA-R3-HC - Filed July 25, 2008**

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Petitioner, Andrew B. Simpkins, filed a petition for writ of habeas corpus in the Circuit Court of Wayne County, attacking his Montgomery County convictions of attempted first degree murder and felonious possession of a prohibited weapon. Upon motion of the State, the trial court dismissed the petition without an evidentiary hearing, and Petitioner has appealed. On appeal the State has filed a motion to affirm by memorandum opinion. We grant the State's motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court for Wayne  
County Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Andrew B. Simpkins, Clifton, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; and T. Michel Bottoms, District Attorney General, for the appellee, the State of Tennessee.

**MEMORANDUM OPINION**

Following a jury trial, Petitioner was convicted of attempted first degree murder and felonious possession of a prohibited weapon. Sentences for the convictions were ordered to be served concurrently, with a total effective sentence of twenty-five years. The judgments were affirmed on direct appeal. State v. Andrew B. Simpkins, No. M2001-01737-CCA-R3-CD, 2002 WL 1885182 (Tenn. Crim. App., at Nashville, Aug. 15, 2002), perm. to appeal denied (Tenn. Dec. 23, 2002).

In his petition, and on appeal, Petitioner asserts that the judgments are void, and that he is entitled to habeas corpus relief, because each count of the indictment charging Petitioner with the crimes failed to allege all the elements of the offense and did not specifically charge the facts of the offense. Each count of the indictment alleged as follows:

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COUNT 1:

That on or about the 19<sup>th</sup> day of January, 1999, and in the State and County aforesaid, **ANDREW B. SIMPKINS** unlawfully and feloniously, did knowingly or intentionally act with intent to complete a course of action or cause a result that would constitute the offense of First Degree Murder, in violation of TCA 39-13-202 under the circumstances surrounding the conduct as said defendant believed them to be, and said conduct constituted a substantial step toward the commission of said offense, to-wit: by going to the residence of Jesse Lopez and shooting him in the face when the said victim answered the door, in violation of TCA 39-12-101(a)(3) and against the peace and dignity of the State of Tennessee.

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ATTORNEY GENERAL

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COUNT 2:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present and say that on the date aforesaid, and in the State and County aforesaid **ANDREW B. SIMPKINS** unlawfully, feloniously, intentionally and knowingly did possess a short barrel length of less than 18 inches, and the weapon was also less than 26 inches overall, as defined by TCA 39-17-1301, in violation of TCA 39-17-1302 and against the peace and dignity of the State of Tennessee.

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ATTORNEY GENERAL

Petitioner argues that Count 1 failed to allege that he acted with premeditation, and that Count 2 “failed to state the specific facts constituting the offense” because it did not “identify the alleged prohibited weapon.” Our supreme court set forth the following standards regarding habeas corpus relief:

Although no statute of limitations exists for filing a habeas corpus petition, the grounds upon which habeas corpus relief will be granted are narrow. Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004). Habeas corpus relief is available “only when ‘it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993) (quoting State v. Galloway, 45 Tenn. (5 Cold.) 326, 336-37 (Tenn. 1868)). Thus, the writ of habeas corpus will issue only in the case of a void judgment or to free a prisoner after his term of imprisonment or other restraint has expired. Potts v. State, 833 S.W.2d

60, 62 (Tenn. 1992). Unlike a post-conviction petition, a habeas corpus petition is used to challenge void and not merely voidable judgments. Id. A voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity. Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). A void judgment is one that is facially invalid because the court did not have the statutory authority to render such judgment. Id.

Summers v. State, 212 S.W.3d 251, 255-56 (Tenn. 2007).

In Ruff v. State, 978 S.W.2d 95 (Tenn. 1998) the Court held that “where the constitutional and statutory requirements outlined in [State v. Hill [, 954 S.W.2d 725 (Tenn. 1997)]] are met, an indictment which cites the pertinent statute and uses its language will be sufficient to support a conviction.” Id. at 100.

In Hill, the Court cited the constitutional and statutory requirements of an indictment as follows:

. . . an indictment is valid if it provides sufficient information (1) to enable the accused to know the accusation to which answer is requirement, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy.

Id. at 727.

The form of an indictment is subject to statutory prescription also. Tennessee Code Annotated section 40-13-202 (1990) provides that an indictment must:

State the facts constituting the offense in ordinary and concise language, without prolixity or repetition in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment.

Id.

Count 1 of the indictment, charging attempted first degree murder, does not specifically contain the word “premeditation.” However, it does allege that Petitioner acted intentionally or knowingly to commit “[f]irst [d]egree [m]urder, in violation of [Tennessee Code Annotated section] 39-13-202,” and that statute specifically includes the element of premeditation in the crime of first degree murder.

Count 2 does not specify that the prohibited weapon is a “short-barrel shotgun” but a fair reading of the charge reveals that Petitioner was charged with unlawful possession of a weapon with

an overall length of less than 26 inches, and a barrel length of less than 18 inches, “as defined by TCA 39-17-1301, in violation of TCA 39-17-1302.”

Tennessee Code Annotated section 39-17-1302(a)(4) makes it a Class E felony to intentionally or knowingly possess “[a] short-barrel rifle or shotgun.” A “short barrel” is defined in Tennessee Code Annotated section 39-17-1301(12) as “a barrel length of less than sixteen inches (16”) for a rifle and eighteen inches (18”) for the shotgun, or an overall firearm length of less than twenty-six inches (26”). (emphasis added). Clearly, the indictment, when read in conjunction with the statutes cited, alleges that Petitioner was charged with unlawful possession of a shotgun with a short barrel and/or prohibited length.

The counts of the indictment met the minimum constitutional and statutory requirements set forth in Hill. The trial court did not err in dismissing the petition.

### **CONCLUSION**

The trial court’s order dismissing the petition for writ of habeas corpus is affirmed pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

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THOMAS T. WOODALL, JUDGE